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31 July 2007
by express

Hon. Vernon Williams
Secretary
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20024

Re: PYCO Industries v. South Plains Switching, Ltd.,
F.D. 34870;

219891

PYCO Industries -- Alternative Service -- South
Plains Switching, Ltd., F.D. 34889 .

Request for Emergency Relief against Continued
SAW/Choo Choo Retaliation

219892

Dear Mr. Williams:

On behalf of PYCO Industries, enclosed please find an original and ten copies of an emergency motion directed at continued retaliation by incumbent railroad South Plains Switching, Ltd. (SAW) and its alter ego Choo Choo Properties that is preventing and obstructing PYCO's use of a private industrial crossing.

Thank you for your assistance.

Very truly,


Charles H. Montange
for PYCO Industries, Inc.

ENTERED
Office of Proceedings

AUG 01 2007

Part of
Public Record

Encls.

cc. counsel per certificate of service (w/encl.)
Mr. McLaren (for PYCO) (w/encl.)

BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO Industries, Inc.)
v.) F.D. 34870
South Plains Switching, Ltd. Co.)

PYCO Industries, Inc. --)
Alternative Rail Service --) F.D. 34889
South Plains Switching, Ltd. Co.)



Emergency Motion
to Prevent Further
Retaliatory Actions by South Plains Switching, Ltd. Co.
Against Pyco Industries, Inc.

PYCO Industries, Inc. ("PYCO"), again must request this agency to enter emergency relief against incumbent switch provider South Plains Switching, Ltd. Co. ("SAW") in connection with PYCO's access to its cottonseed stockpile. That stockpile currently contains 60,000 tons of cottonseed, valued at \$10.5 million. See Exhibit A (Supplemental Lacy Dec.) ¶7. Cottonseed rots in summer heat. In order to process it into cottonseed oil (which is shipped out by rail) or to ship it to Penny Newman (by rail), PYCO must move the cottonseed across SAW track.¹ In the past, PYCO has relied upon a private crossing over the so-called "wye" track on the south side of the SAW yard

¹ More specifically, the stockpile is located on the east side of the "wye" track, and PYCO's Plant No. 1 is located on the west side of the "wye" track. The seed is processed into oil for shipment out by rail at Plant No. 1. Raw cottonseed is loaded into cars for shipment to Penny Newman on private PYCO track at Plant No. 1 as well. In order to process cottonseed into oil and ship it out by tank car, or to ship out raw seed to Penny Newman, PYCO must transfer the seed across SAW track. See Exhibit A ¶3.

in Lubbock for that purpose. In 2006, SAW and its alter ego Choo Choo Properties, Inc. (Choo Choo)² obstructed access and PYCO sought and obtained relief from this Board. SAW and Choo Choo are again obstructing that access. See id.

Prior incident. Approximately one year ago, SAW obstructed PYCO's private crossing over the "wye" to PYCO's stockpile. SAW employed two means to that end: (a) parking rail equipment athwart the crossing, and (b) purporting to deed the property to Choo Choo. This Board responded to SAW's parking of equipment by modifying the protocol governing shared use of the SAW trackage for alternative rail service purposes to bar SAW from using the "wye" during protocol hours assigned to West Texas & Lubbock (WTL), PYCO's alternative service provider.³ The Board's November 21, 2006 order authorizing temporary alternative service under Part 1147 imposes the same protocol,

² E.g., Pyco Industries -- Feeder Line Application-- Lines of South Plains Switching, Ltd., F.D. 34890, served Jan. 24, 2007, slip op. at 5 ("SAW treats Choo Choo as a separate entity only when it is convenient for regulatory purposes, and otherwise ignores Choo Choo's supposedly separate status"). See also Exhibit A ¶4 (corroborating alter ego relationship).

³ The basic protocol in the initial alternative service proceeding under Part 1146 was ordered in PYCO Industries-- Alternative Rail Service -- South Plains Switching, Ltd., F.D. 34802, served Feb. 16, 2006. In PYCO Industries -- Alternative Rail Service -- South Plains Switching, Ltd., F.D. 34802, served June 21, 2006, this Board modified the protocol to provide that "[d]uring the hours allocated to WTL under these protocols, SAW may not place or have any equipment on the wye coming out of the south side of its yard." Slip op. at 8, ordering paragraph 5.

as amended, on SAW.⁴ Thus, SAW is supposedly barred already from parking equipment in the "we" during hours assigned to WTL.

This Board responded to SAW's purported deed to Choo Choo by voiding all deeds by SAW to Choo Choo after May 5, 2006 (the date PYCO filed its initial feeder line application). Decision in F.D. 34890, 34802, 34870, 34889, and 33753 (Sub-no 1), served August 3, 2006.

During the pendency of requests for relief before the Board, Choo Choo obtained a state court injunction from the 237th District Court for Lubbock County barring PYCO from use of the we crossing, although the state court gave PYCO 30 days to move its 2006 stockpile. See Exhibit B (McLaren Dec.) at ¶ 4. That 30 day period has long since expired.

Current situation. When PYCO opens its gates to the crossing, SAW has again parked rail cars athwart the crossing. See Exhibit A (Lacy Dec.) ¶ 10 & Appendix III (photos of parked SAW rail cars blocking we crossing).

In addition, although PYCO has sought dismissal of Choo

⁴ West Texas & Lubbock (WTL) provides temporary alternative service pursuant to PYCO Industries -- Alternative Rail Service -- South Plains Switching, Ltd., F.D. 34889, served Nov. 21, 2006. That decision (slip op. p. 6, ordering paragraph 4) imposes the "existing operating protocols." This refers to the protocols ordered in PYCO Industries -- Alternative Rail Service -- South Plains Switching, Ltd., F.D. 34802, served Feb. 16, 2006, and in PYCO Industries -- Alternative Rail Service-- South Plains Switching, Ltd., F.D. 34802, served June 21, 2006. As indicated in footnote 2, ordering paragraph 5 of this latter decision bars SAW from placing or having equipment in the we during WTL protocol hours.

Choo's state court trespass action and dissolution of the injunction barring PYCO from use of the "we," counsel for SAW and Choo Choo have claimed that SAW deeded the "we" to Choo Choo in March 2006, and that the STB order served August 3, 2006 voiding deeds after May 5, 2006 does not apply. See Exhibit B (Supp. McLaren Dec.) ¶5. The state court has written STB for clarification, but has now viewed clarification received from STB's Office of General Counsel as insufficient to dismiss the lawsuit or dissolve the injunction. See Exhibit B ¶¶ 5-6. SAW and Choo Choo of course are seeking to maintain the injunction notwithstanding this Board's orders.

PYCO has filed document requests against SAW in its feeder line proceeding against SAW (F.D. 34890) and in its Complaint proceeding against SAW (F.D. 34870) pursuant to which SAW should have produced all deeds out to Choo Choo. The only deed from SAW to Choo Choo which SAW has produced to PYCO that relates to the "we" is set forth in the exhibit to Gary McLaren's Declaration (Exhibit B hereto) and as Appendix I to Robert Lacy's Supplemental Declaration (Exhibit A hereto). That deed is dated June 13, 2006. Since STB has exclusive and preemptive jurisdiction,⁵ and since STB's order voiding post-May 5, 2006 deeds is now final and no longer subject to judicial review under the Hobbs Act,⁶ the SAW to Choo Choo June 13, 2006 is

⁵ 49 U.S.C. § 10501(b) (preempts state law); Colorado v. United States, 271 U.S. 153, 165-66 (1926) (plenary authority).

⁶ SAW or Choo Choo had 60 days to petition for judicial review and did not. See 28 U.S.C. § 2344.

thus void under this Board's order served August 3, 2006.

If SAW purported to deed the property to Choo Choo in March 2006, SAW has wrongly failed to produce such a deed, and no such deed should be assumed to exist, although the 237th District Court in Lubbock County seems to be acting on that assumption, based on statements by SAW/Choo Choo counsel that there was some kind of March deed. See Exhibit B (discussion of situation by Mr. McLaren, PYCO's Lubbock counsel).

If SAW now belatedly produces such a deed, it should nonetheless be voided. This Board has already indicated that any deed issued by SAW after SAW received notice on January 9, 2006, that PYCO intended to file a feeder line application is subject to being voided. In particular, in response to SAW/Choo-Choo's alleged termination of the lease to Hanson Aggregates (which supported PYCO's feeder line application), this Board voided SAW's April 28, 2006 deed to Choo-Choo of the property underlying the Hanson lease. Decision in F.D. 34890, served January 24, 2007. The Board noted that SAW had been on notice since January 9, 2006 that a feeder line application might be filed. Id. Slip op. at 5. The Board also voided attempted cancellations of the Hanson lease by both SAW and Choo-Choo. Id. at 6.⁷ By the same reasoning, any deed SAW

⁷ For sake of completeness, PYCO also notes that by pleading served October 13, 2006, in the feeder line proceeding, F.D. 34890, and in the two alternative service dockets (F.D. 34889 and 34802), PYCO moved for an order voiding additional SAW sales to Choo-Choo since either (a) the filing of F.D. 34802 on December 20, 2005, or (b) January 9, 2006, the date PYCO actually notified the world that it intended to file a feeder

issues to Choo Choo after January 9, 2006 must fall: it is clearly retaliatory and serves no railroad purpose.

In an effort to avoid having to approach this Board again for relief, PYCO has been endeavoring to use city streets to access its stockpile. See Exhibit A ¶8. But this means of access is expensive, and SAW/Choo Choo's Larry Wisener has complained to transportation officials in Texas that this creates a safety hazard. See Exhibit A ¶ 8, and Appendix II thereto. While Wisener's complaints are contrived (id.), PYCO believes that it would be safer to use its private crossing over the "we." Moreover, as indicated in the PYCO incident reports found in Appendix II to Exhibit A, SAW's operations have created an incident already in connection with PYCO's use of the streets to move its stockpile.

Specific request for relief. In order to secure use by PYCO of its private crossing over the "we," PYCO requests this Board to issue an order

-- specifically invalidating the June 13, 2006, deed from SAW to Choo Choo purporting to convey the "we," and any other deed from SAW to Choo Choo relating to the "we" that SAW now

line application. This Board has not ruled on that motion. Since PYCO filed its October 2006 motion, PYCO has received additional discovery responses from SAW, indicating so far only that SAW purported to transfer the "we" to Choo Choo on June 13, 2006. However, additional discovery responses, especially in the Complaint proceeding, indicate that there have been a significant number of transfers from SAW to Choo Choo in April, 2006, shortly before PYCO filed its initial feeder line application. The problem of transfers out by SAW to Choo Choo is substantial, and all such purported transfers should be voided in the feeder line proceeding.

"belatedly conjure[s] up" (Exhibit B ¶8). A copy of the June 13 deed is attached as Appendix I to the Supplemental Lacy Declaration (Exhibit A) and to the McLaren Declaration (Exhibit B).

-- ordering SAW and Choo Choo to cease all interference with PYCO's use of the "wye" crossing during the protocol hours assigned to West Texas & Lubbock operations.⁸

Additional Argument

A common carrier railroad ordinarily has an obligation under 49 U.S.C. § 11101(a) to provide adequate rail service upon request. Rather than act as a common carrier to provide transportation service to its major rail-dependent customer (PYCO), SAW continues to use every means it can devise to put PYCO out of business.

Larry Wisener (as president of SAW) told Robert Lacy of PYCO on November 18, 2005, when he began curtailing service, terminating leases, and otherwise denying PYCO adequate service that PYCO "would have to try to figure out how to take care of [itself]." Lacy Declaration attached to PYCO's Petition filed Dec. 20, 2005, in F.D. 34802, Exhibit 4, Nov. 18, 2005 entry.

Mr. Lacy clearly understood Mr. Wisener to be intending retaliation because of failure of PYCO to buy SAW out pursuant to his demands. See Lacy Declaration, supra, at p.3 ¶14.

Mr. Wisener has remained true to his word. We will not

⁸ This is in accordance with this Board's order served June 21, 2006, in F.D. 34802, slip op. at 8, ordering paragraph 5.

reiterate the entire sorry history of SAW's efforts to shake down PYCO. However, by way of summary, as Choo-Choo, and through his relationship to SAW's owner, Mr. Wisener still strives to do all he possibly can do to intimidate, punish, and raise the cost to the company which was SAW's main shipper. SAW's willful maintenance through obfuscation of a state court injunction based on a void deed, SAW's continued blockade of the "we," SAW's efforts to contrive incidents and complaints to local transportation officials, and all the related actions of Mr. Wisener and his entities are not discharge of common carrier responsibilities but are instead attempted exercise of monopoly power. SAW/Choo Choo/Wisener continue to challenge this Board's jurisdiction and authority.

There are so many ironies in the situation in Lubbock. One is that Mr. Wisener demanded that BNSF consent to surcharge all SAW customers on the ground that SAW suffered decreased revenue purportedly because BNSF failed to sell its' north Lubbock business to SAW as well as its south Lubbock business. When BNSF refused consent, SAW sued BNSF in state court, using the state court to regulate rail service in Lubbock. As a result of orders from the state court, BNSF reluctantly consented to Wisener's demand for a surcharge.

But while SAW/Wisener justify their argument elsewhere for a surcharge on the basis of allegedly insufficient traffic, they take step after step to resist traffic growth. When PYCO seeks to increase traffic, Wisener/SAW respond with imposition of a

surcharge on on PYCO (and only PYCO) justified solely by the claim that PYCO increased its traffic! SAW's arguments are everywhere inconsistent with its position elsewhere, and inevitably bereft of any sound justification.

SAW repeatedly threatened to withhold service from PYCO, otherwise denied adequate service, pressured PYCO to buy part of SAW for an exorbitant price, retaliated when PYCO did not, threw management tantrums, cussed out customers, and otherwise behaved like a company possessed of virtually insurmountable and unregulated monopoly power which can do whatever it wants, whenever it wants. To paraphrase the old "saw" from Hamlet, "something is rotten in [Lubbock]."

PYCO necessarily again requests this Board to issue orders preventing SAW/Choo Choo/Wisener retaliation before PYCO's \$10 million stockpile of cottonseed is as rotten as SAW's discharge of its common carrier obligations. This Board clearly has authority to void the June 13, 2006 deed, and has done so. Apparently another order specifically voiding that deed and anything else that SAW conjures up in connection with the "we" is necessary to resolve the issue in state court. Any deed by SAW to Choo Choo after January 9, 2006, should be voided for the reasons already discussed in this Board's decisions of August 3, 2006, and January 21, 2007, in this and related dockets. SAW/Choo Choo/Wisener retaliation must cease.

Further to this end, SAW and Choo Choo should be ordered to stop any interference with PYCO's use of the "we" during WTL

protocol hours. The rail cars must be off that "we" during WTL protocol hours, and the order should be broad enough to apply to anything else SAW or Choo Choo or Wisener contrive to do to block PYCO's use of the "we" crossing during those hours.

Conclusion

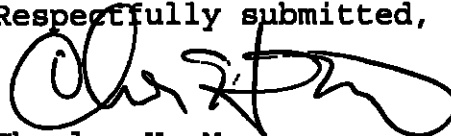
For the reasons stated above, PYCO requests the Board

-- specifically to void the June 13, 2006 deed from SAW to Choo Choo attached to the McLaren and Lacy Declarations furnished herewith,

-- specifically to void any other deed SAW or Choo Choo belatedly present as justification for Choo Choo's claim of ownership of the "we," and

-- specifically to bar SAW and Choo Choo from any form of interference with PYCO's use of the "we" crossing during WTL protocol hours.

Respectfully submitted,



Charles H. Montange
for PYCO Industries, Inc.
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Seattle, WA 98177
(206) 546-1936
fax: -3739

Of counsel:

Gary McLaren, Esq.
Phillips & McLaren
3305 66th St., Suite 1A
Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

Exhibit A -- Supplemental Lacy Declaration

Appendix I -- June 13, 2006, SAW to Choo Choo deed

Appendix II -- incident reports

Appendix III -- SAW railcars blocking wye

Exhibit B -- Supplemental McLaren Declaration

June 13, 2006, SAW to Choo Choo deed attached

Certificate of Service

I hereby certify service of the foregoing Emergency Motion upon the following counsel of record by express service, next business day delivery, this 31st day of July 2007:

Thomas McFarland
208 South LaSalle Street, Suite 1890
Chicago, IL 60606-1112 (for SAW)

with a courtesy copy to

John D. Heffner, Esq.
1920 N Street N.W., Suite 800
Washington, D.C. 20036 (for WTL)

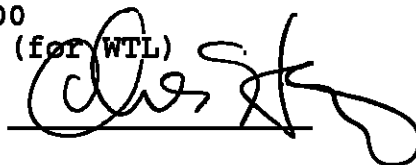
A handwritten signature in black ink, appearing to read 'John D. Heffner', is written over a horizontal line.

EXHIBIT A

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.)	
)	
v.)	F.D. 34870
)	
SOUTH PLAINS SWITCHING LTD)	
PYCO INDUSTRIES, INC. --)	
ALTERNATIVE RAIL SERVICE --)	F.D. 34889
SOUTH PLAINS SWITCHING LTD.)	

Supplemental Declaration of
Robert Lacy
in support of Emergency Motion

I, Robert Lacy, make this Supplemental Declaration in support of PYCO Industries, Inc.'s (PYCO's) emergency motion to prevent further retaliatory actions by South Plains Switching, Ltd. (SAW) against PYCO.

1. I am the Senior Vice President-Marketing for PYCO Industries, Inc., and am responsible for overseeing shipment of product to customers. As such, I am familiar with PYCO's rail-dependent operations. This Declaration is made on behalf of PYCO.

2. As I have indicated in past Declarations in these and/or related proceedings, PYCO continues to experience efforts by SAW to retaliate against PYCO for seeking relief from this Board from inadequate rail service provided by SAW.

3. PYCO maintains a large cottonseed stockpile on the east side of a "wye" that serves a lead running south out of the SAW yard in Lubbock. PYCO's Plant No. 1 is located on the west side of

that "we." Cottonseed from the stockpile must be transferred from the stockpile to Plant No. 1 for processing across the "we." It is then shipped out in rail tankcars to PYCO's cottonseed oil customers. Cottonseed which is not processed for oil is sold as feed for livestock. Most of these sales are to Penny Newman, and are by rail car. In order to load the rail cars for Penny Newman, the seed must be transported across the "we" for loadout in PYCO's private rail sidings at Plant No. 1. In short, in order to move seed for processing for rail shipment, or to move seed directly for rail shipment, PYCO must move the seed across the "we." This has traditionally been done via a private crossing PYCO has long maintained over the "we."

4. SAW blocked the crossing last year at approximately this same time, claiming to have sold the property to Choo Choo Properties, Inc., which obtained an injunction in state court to prevent PYCO from using the crossing. Choo Choo is owned by Larry Wisener. Mr. Wisener was also the president of SAW. Although SAW claims that this same Larry Wisener is no longer the president of SAW, SAW is at the very least owned by his wife, and Mr. Wisener remains a spokesman and so far as we can tell the manager of SAW. Choo Choo and SAW are alter egos of each other. Mr. Wisener has been using Choo Choo as a vehicle for his continued efforts to retaliate against PYCO on behalf of SAW.

5. PYCO last year sought emergency relief from this Board due

to the crossing and a variety of other lease and license terminations by SAW or Choo Choo directed against PYCO. Because the situation with respect to the "we" was urgent, PYCO also negotiated a temporary 30-day reprieve from the injunction which the state court issued against PYCO's use of the "we." That reprieve has long since expired. In an order dated August 3, 2006, this Board invalidated SAW's deeds subsequent to May 5, 2006, to Choo Choo which affected PYCO. While PYCO believe that this should result in the injunction barring PYCO's use of the "we" being removed, the SAW/Choo Choo attorney maintains in state court that the Board's August 3, 2006 order invalidating deeds was somehow ambiguous. He appears to have suggested that Choo Choo got the property from SAW in March 2006, although neither Choo Choo nor SAW have produced a deed for the "we" of that date, and PYCO can find none in public records. In any event, the state court has refused to dismiss the injunction, favoring letters seeking clarification from the STB instead.

6. The only deed which appears to relate to the "we" which SAW has produced in response to discovery requests from PYCO is dated June 13, 2006. I am attaching a true and correct copy as Appendix I to my statement. This deed is subsequent to May 5, 2006. It is void under the STB's August 3, 2006 order. However, SAW and Choo Choo resist efforts to dismiss their injunction suit, and the Texas state court apparently will not treat SAW's transfer

of the "wye" to Choo Choo as void absent an STB directive specifically voiding the June 13, 2006 deed (or any other deed that SAW and Choo Choo come up with bearing on the "wye"), and telling the court that STB action takes precedent over state law.

7. PYCO again has a large seed stockpile, currently contains about 60,000 tons of cottonseed, valued at \$10.5 million. Because of increased moisture from above normal rainfall, and heat, PYCO must rapidly process this stockpile or otherwise ship it out to its customers. Otherwise the stockpile will rot, rendering it unusable for processing into cottonseed oil, and of much less value as cattle feed.

8. In an effort to avoid having to seek further relief from the Board, PYCO has spent considerable funds and applied for permits to move its stockpile on a more circuitous route for processing and rail shipment out over city and state highways and streets. Unfortunately, SAW has already staged at least one incident in which it operated its locomotive outside its protocol hours and failed to sound its horn during a time when PYCO's trucks were passing on public streets carrying seeds. Based on statements by Lubbock transportation officials, it is PYCO's understanding that Larry Wisener made numerous hysterical calls to Texas Department of Transportation complaining that PYCO's trucks were creating an unsafe condition on city streets. As a result, PYCO investigated the situation, and attaches hereto as Appendix II the

reports prepared by the PYCO personnel who looked into the facts.

While Larry Wisener's claim to Texas DOT was untrue, PYCO is necessarily concerned that SAW's persistence in operating outside its protocol hours and its cavalier operating procedures generally may result in an accident. In addition, Larry Wisener's misrepresentations to local officials are intended to threaten PYCO's use of streets and thus to shut down any access of PYCO to its stockpile. If traffic officials prevent PYCO's use of the streets, then PYCO's efforts to process its stockpile and to ship product out by rail not only will have been rendered more expensive by SAW but will have been terminated completely. In any event, if Wisener is correct in his purported claims to transportation officials that PYCO's use of the city streets is not safe, then use of the "wye" for transport of the cottonseed is essential for safety reasons.

9. In sum, PYCO requests this Board

-- specifically to invalidate the June 13, 2006, deed attached as Appendix I so the state court will release the injunction barring PYCO's use of the "wye" crossing, and specifically to state that any other SAW deeds to Choo Choo bearing on the "wye" are void as well;

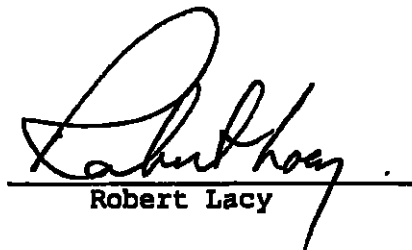
-- and to bar SAW and Choo Choo from doing anything to block or to interfere with PYCO's use of the "wye" crossing during protocol hours in which the track is not assigned to SAW.

10. I attach as Appendix III two pictures showing SAW cars parked across our crossing at the "wye" when we opened the gates. The massive cottonseed stockpile is seen in the background.

11. PYCO reiterates that its operations are rail dependent, and restates its understanding that a common carrier railroad should provide adequate service to rail dependent shippers rather than use its position to thwart their operations and their efforts to ship by rail to their customers.

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 31, 2007


Robert Lacy

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Appendix I

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DEED NO.: 61401

QUITCLAIM DEED

**THE STATE OF TEXAS §
COUNTY OF LUBBOCK §**

KNOW ALL MEN BY THESE PRESENTS:

THAT the SOUTH PLAINS SWITCHING LTD. CO., a Texas Limited Liability Company, of the County of Lubbock, State of Texas, (hereinafter "Grantor") for and in consideration of the sum of TEN DOLLARS AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, in hand paid by the grantee herein named, the receipt and sufficiency of which is hereby acknowledged, has **QUITCLAIMED**, and by the presents does **QUITCLAIM** unto **CHOO CHOO PROPERTIES, INC. of P. O. Box 64420, Lubbock, Texas 79464-4420** (hereinafter "Grantee"), all of its right, title and interest in and to the real property situated in Lubbock County, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "the Property").

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the Property and premises unto Grantee, its successors and assigns forever, so that neither Grantor nor its legal representatives or assigns shall have, claim or demand any right or title to the Property, premises or appurtenances or any part thereof.

This conveyance is made without warranty of any kind, express or implied and no covenant of warranty shall be implied from the use of any word or words herein contained, including without limitation any warranty that might arise by common law, or the warranties in Section 5.023 of the Texas Property Code (or its successor). By the acceptance of this deed,

Grantee takes the Property "AS IS". Grantor has not made and does not make any representations as to the physical condition, layout footage, expenses, zoning, operation, or any other matter affecting or related to the Property, and Grantee hereby expressly acknowledges that now such representations have been made. Grantor makes no other warranties, express or implied, of merchantability, marketability, fitness or suitability for a particular purpose or otherwise except as set forth and limited herein. Any implied warranties are expressly disclaimed and excluded.

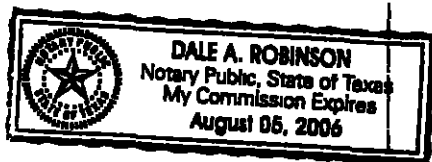
EXECUTED on this the 13th day of June, 2006.

South Plains Switching, Ltd., Co.

Delilah Wisener
By: Delilah Wisener, Owner

THE STATE OF TEXAS §
§
COUNTY OF LUBBOCK §

This instrument was acknowledged before me on this the 13th day of June, 2006 by DELILAH WISENER, Owner of South Plains Switching, Ltd. Co., a Texas Limited Liability Company, on behalf of said company.



Dale A. Robinson
NOTARY PUBLIC, STATE OF TEXAS
Dale A. Robinson
Printed Name of Notary

My Commission Expires: August 05, 2006

EXHIBIT "A"

LAND DESCRIPTION

BEGINNING AT A POINT IN THE EAST LINE OF U. S. HIGHWAY 87 (AVENUE "A") AND THE PRESENT SOUTH PROPERTY LINE OF THE SOUTH PLAINS SWITCHING LTD., COMPANY WHICH IS FORTY-SIX AND THREE TENTHS FEET (46.4') DISTANCE SOUTHWESTERLY FROM AND PARALLEL WITH THE ORIGINAL MAIN TRACK OF THE FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY (PREDECESSOR COMPANY) FOR THE BEGINNING CORNER OF THIS TRACT, WHENCE THE SOUTHEAST CORNER OF SECTION 7, BLOCK "B" AND THE SOUTHWEST CORNER OF SECTION 5, BLOCK "B", LUBBOCK COUNTY, TEXAS BEARS SOUTH 2,006.01' AND EAST 69.95';

THENCE NORTH 02° 12' 46" WEST ALONE THE EAST LINE OF U. S. HIGHWAY 87 (AVENUE "A"), 40.46' FEET TO A POINT FOR THE NORTHWEST CORNER OF THIS TRACT BEING A POINT SOUTHWESTERLY AND EIGHT AND FIVE TENTHS FEET (8.5') DISTANCE FROM AND PARALLEL WITH THE ORIGINAL MAIN TRACK OF THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY;

THENCE SOUTH 71° 36' 45" EAST 731.04 FEET TO A CORNER OF THIS TRACT BEING A POINT SOUTHWESTERLY AND EIGHT AND FIVE TENTHS FEET (8.5') DISTANCE FROM AND PARALLEL WITH THE ORIGINAL MAIN TRACK OF THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY;

THENCE SOUTHEASTERLY, ALONG THE ARC OF A CURVE TO THE RIGHT, 65.83 FEET TO A CORNER, SAID CURVE HAS A RADIUS OF 593.05 FEET, A CENTRAL ANGLE OF 8° 21' 35" AND A CORD THAT BEARS SOUTH 68° 25' 58" EAST A DISTANCE OF 65.79 BEING A POINT EIGHT AND FIVE TENTHS FEET (8.5') DISTANCE FROM AND PARALLEL WITH THE CENTERLINE OF THE SWITCHING LEAD TRACK ON THE WEST END OF THE RAIL YARD;

THENCE SOUTH 65° 15' 10" EAST PARALLEL WITH THE SWITCHING LEAD TRACK ON THE WEST END OF THE RAIL YARD, A DISTANCE OF 565.08 FEET TO A CORNER BEING A POINT 74.74 FEET DISTANCE FROM AND PARALLEL WITH THE ORIGINAL MAIN TRACK OF THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY;

THENCE SOUTHEASTERLY, ALONG THE ARC OF A CURVE TO THE LEFT, 85.8 FEET TO A CORNER, SAID CURVE HAS A RADIUS OF 772.95 FEET, A CENTRAL ANGLE OF 8° 21' 35" AND A CORD THAT BEARS SOUTH 68° 25' 58" EAST A DISTANCE OF 85.75 TO A CORNER BEING A POINT 79.5 FEET DISTANCE FROM AND PARALLEL WITH THE ORIGINAL MAIN TRACK OF THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY;

THENCE SOUTH 71° 36' 45" EAST 1,158.07 FEET TO THE NORTHEAST CORNER OF THIS TRACT AND A POINT SOUTHWESTERLY AND 79.5 FEET DISTANCE FROM AND PARALLEL WITH THE ORIGINAL MAIN TRACK OF THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY;

THENCE SOUTH $18^{\circ} 23' 15''$ WEST 277.57 FEET TO A POINT 8.5 FEET EAST OF BEING CONCENTRIC AND PERPENDICULAR WITH THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILROAD COMPANY ICC TRACK NO. 73 (WEST LEAD TO BURLINGTON INDUSTRIAL DISTRICT NO. 2);

THENCE SOUTH $01^{\circ} 13' 27''$ EAST A DISTANCE OF 327.4 FEET BEING 8.5 FEET EASTERLY AND AT RIGHT ANGLES TO AND PARALLEL WITH THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILROAD COMPANY ICC TRACK NO. 73 (WEST LEAD TO BURLINGTON INDUSTRIAL DISTRICT NO. 2).

THENCE SOUTH $88^{\circ} 46' 33''$ WEST A DISTANCE OF 17.5 FEET BEING A POINT 9 FEET PERPENDICULAR AND WESTERLY AND AT RIGHT ANGLES TO AND PARALLEL WITH THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILROAD COMPANY ICC TRACK NO. 73 (WEST LEAD TO BURLINGTON INDUSTRIAL DISTRICT NO. 2);

THENCE NORTH $01^{\circ} 13' 27''$ WEST A DISTANCE OF 327.4 FEET BEING 9 FEET WESTERLY AND AT RIGHT ANGLES TO AND PARALLEL WITH THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILROAD COMPANY ICC TRACK NO. 73 (WEST LEAD TO BURLINGTON INDUSTRIAL DISTRICT NO. 2);

THENCE NORTHWESTERLY, BEING 9 FEET WESTERLY AND AT RIGHT ANGLES TO AND PARALLEL WITH THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILROAD COMPANY ICC TRACK NO. 73 (WEST LEAD TO BURLINGTON INDUSTRIAL DISTRICT NO. 2), ALONG THE ARC OF A CURVE TO THE LEFT, 206.62 FEET, SAID CURVE HAS A RADIUS OF 374.06 FEET, A CENTRAL ANGLE OF $31^{\circ} 29' 35''$ AND A CORD THAT BEARS NORTH $15^{\circ} 49' 27''$ WEST, 204.00 FEET TO A CORNER BEING A POINT SOUTHWESTERLY 198.98' DISTANCE FROM AND PARALLEL WITH THE ORIGINAL MAIN TRACK OF THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY, BEING ALSO THE NORTHEAST CORNER OF LOT 3 PLAINS COOPERATIVE OIL MILL ADDITION TO THE CITY OF LUBBOCK, LUBBOCK COUNTY, TEXAS;

THENCE NORTHWESTERLY, ALONG THE ARC OF A CURVE TO THE LEFT, 224.76 FEET, SAID CURVE HAS A RADIUS OF 374.06 FEET, A CENTRAL ANGLE OF $34^{\circ} 25' 40''$ AND A CORD THAT BEARS NORTH $47^{\circ} 38' 42''$ EAST, 221.40 FEET TO A CORNER BEING A POINT SOUTHWESTERLY 108.9' DISTANCE FROM AND PARALLEL WITH THE ORIGINAL MAIN TRACK OF THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY;

THENCE NORTH $62^{\circ} 45' 20''$ WEST 58.52 FEET TO A CORNER BEING SOUTHWESTERLY AND 99.9' DISTANCE FROM AND PARALLEL WITH THE ORIGINAL MAIN TRACK OF THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY;

THENCE NORTHWESTERLY, ALONG THE ARC OF A CURVE TO THE LEFT, 99.95 FEET, SAID CURVE HAS A RADIUS OF 891.07 FEET, A CENTRAL ANGLE OF $6^{\circ} 25' 37''$ AND A CORD THAT BEARS NORTH $68^{\circ} 22' 45''$ WEST, 99.9 FEET TO A CORNER BEING A POINT SOUTHWESTERLY 94.3 FEET DISTANCE FROM AND PARALLEL

WITH THE ORIGINAL MAIN TRACK OF THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY;

THENCE NORTH $71^{\circ} 16' 47''$ WEST, 569.33 FEET TO A CORNER BEING SOUTHWESTERLY 91.0 FEET DISTANCE FROM AND PARALLEL WITH THE ORIGINAL MAIN TRACK OF THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY;

THENCE NORTH $68^{\circ} 04' 49''$ WEST, 725.41 FEET TO A CORNER BEING SOUTHWESTERLY 46.3 FEET DISTANCE FROM AND PARALLEL WITH THE ORIGINAL MAIN TRACK OF THE FORMER FORT WORTH AND DENVER SOUTH PLAINS RAILWAY COMPANY;

THENCE NORTH $71^{\circ} 36' 45''$ WEST, 800.00 FEET TO THE PLACE OF BEGINNING AND THE SOUTHWEST CORNER OF THIS TRACT.

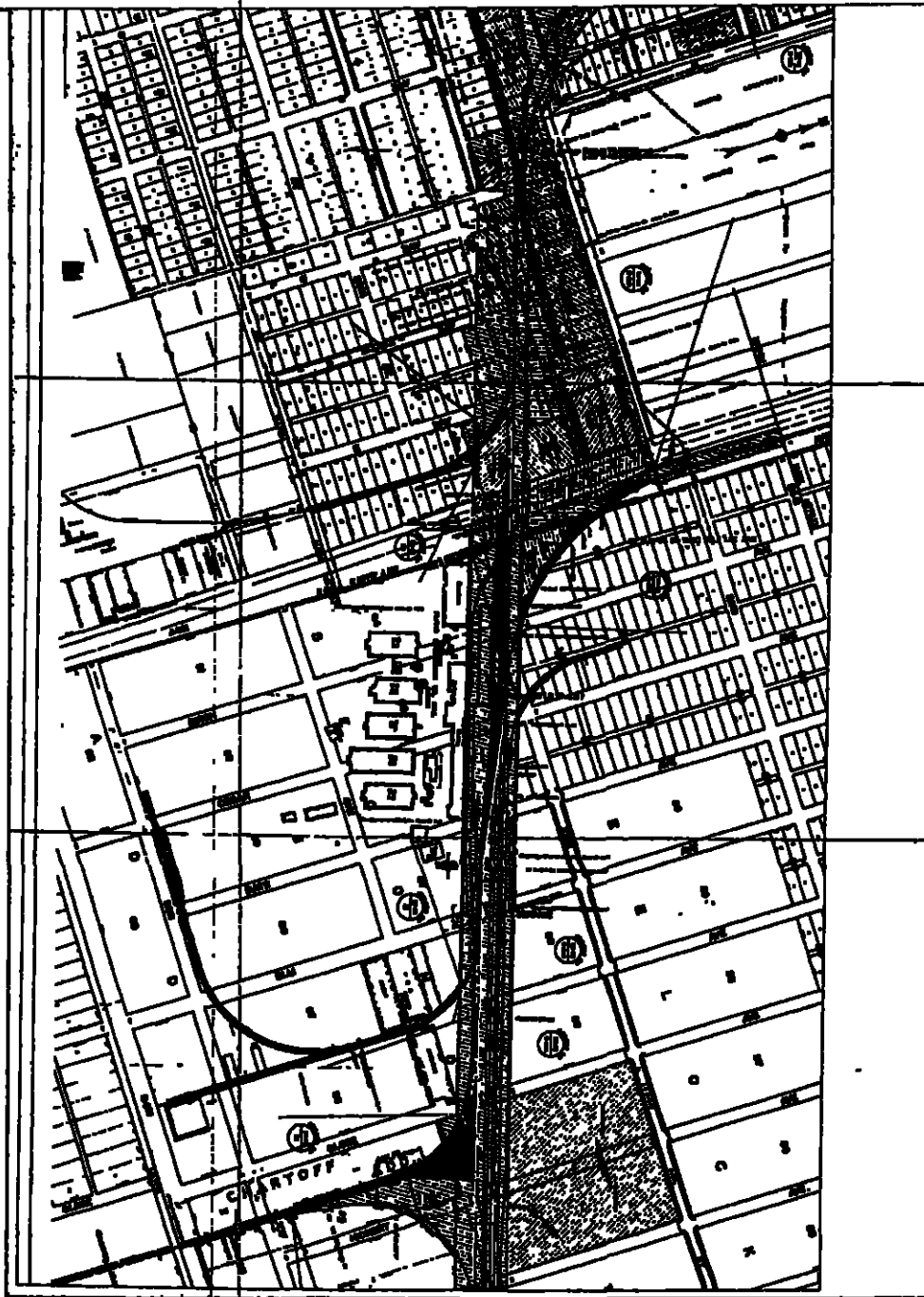


Exhibit "A"
Drawing No. 61401

Sheet: 1 of 1 Date: 3/22/01	Choo - Choo Properties, Inc. P. O. Box 64420 Lubbock, TX 79464	South Plains Switching, Ltd., Company P. O. Box 64299 -- Lubbock, TX 79464 Phone: 806-828-4841 -- Fax: 806-828-4863	Landreth Engineering, LLC P. O. Box 98255 Albuquerque, NM 87199 Phone: 505-839-9915
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Appendix II

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PYCO Industries, Inc.
Cottonseed Products

MEMORANDUM

To: Mr. Gail Kring
From: Les Howell-Purchasing & Seed Management Director
CC:
Date: 07/17/07
Subject: Railroad Crossing Through Barricaded Area

Events:

At 8:30am, John Ramirez and I were passing by the construction office on the company cart when the SAW switch crew started south toward the 34th street crossing. Martin Adams was driving a seed truck headed west in the barricade area toward the Globe entry. He had already stopped approximately 25 feet from the Railroad crossing when the warning lights started. Douglas Anthony was driving a seed truck headed east in the barricade area toward the seed storage area. He had already stopped approximately 30 feet when the warning lights started. Shadley Wiesner was standing at the front of the switch engine as it approached the crossing. SAW did not sound the locomotive's horn until it had already entered the barricade area on 34th street. SAW proceeded through the crossing sounding their horn in short burst. A black SUV headed west in the south side of the street darted through the Railroad crossing as the warning lights were flashing. PYCO employees did exactly what they were told to do by stopping on looking before entering the Railroad crossing.

At 3pm, Ronnie Gilbert called to tell me that Bryan Wilson from TX Dot had called about a complaint. I called Mr. Wilson and went down to his office for a meeting. Mr. Wilson informed me that his office had received numerous hysterical calls from Larry Wiesner, Owner and President of SAW Railroad. Larry was claiming that PYCO's seed trucks almost caused a major accident this morning while they were crossing at 34th street. Larry claimed that his train had to stop and let PYCO's truck back up out of the way of the crossing. Larry also claimed that PYCO was blocking his crossing with our barricades and that PYCO did not contact him before putting up the barricades. I told Mr. Wilson my version of the story and gave him a copy of the "Application for Barricade Street Use Permit" that was issued to PYCO on May 8, 2007 by the City of Lubbock. I reminded Mr. Wilson that he was our contact last year when TX DOT approved the closing of the road so we could move our seed. Mr. Wilson told me he would have to talk to his Supervisor, but everything seemed to be in order.

P Y C O

P.O. BOX 841
LUBBOCK, TX 79408-0841
TELEPHONE: (806) 747-3434
FAX: (806) 744-3221

PYCO Industries, Inc.
Processors of Cottonseed Products

P.O. BOX 1320
GREENWOOD, MS 38935-1320
TELEPHONE: (662) 453-4312
FAX: (662) 455-6607

July 18, 2007

Ref: 34th Street Barricade Complaint

Approximately 3:00 on Tuesday, July 17, 2007, Brian Wilson from the Texas Department of Transportation called concerning a complaint from Larry Wisner concerning the barricade on 34th Street and it the dangerous situation it was creating. I told Mr. Wilson that I would contact our plant supervisors concerning this matter and report back to him as soon as possible. I called Les Howell concerning the matter and reported back to Mr. Wilson that we had proper permits, personnel training, supervision, barricades, concerning the 34th Street barricade and associated railroad crossing. I informed Mr. Wilson that Mr. Wisner had created the need for this move on 34th Street in that we had several million dollars of seed stored that must be moved to the main plant for processing. Mr. Wisner had refused to permit access to that property by crossing over his railroad spur which ran between the properties. Les Howell reported to me that the dangerous situation that Mr. Wisner had complained about was created by the SAW Switch Crew. The crew was operating outside of it operational protocol and failed to blow a warning horn when the engine approached the crossing until the engine was on the intersection. All PYCO trucks were properly stopped at the crossing, giving at least 25 ft. of clearance. The only traffic not observing the engine or crossing alarms was an SUV that ran the crossing on the south side traffic lanes and barricades.

I called Les Howell again and asked that he meet with Mr. Wilson in order to comply with permits or regulations necessary to continue the seed movement.



Ronnie Gilbert
Vice President – Oil Sales

Appendix III



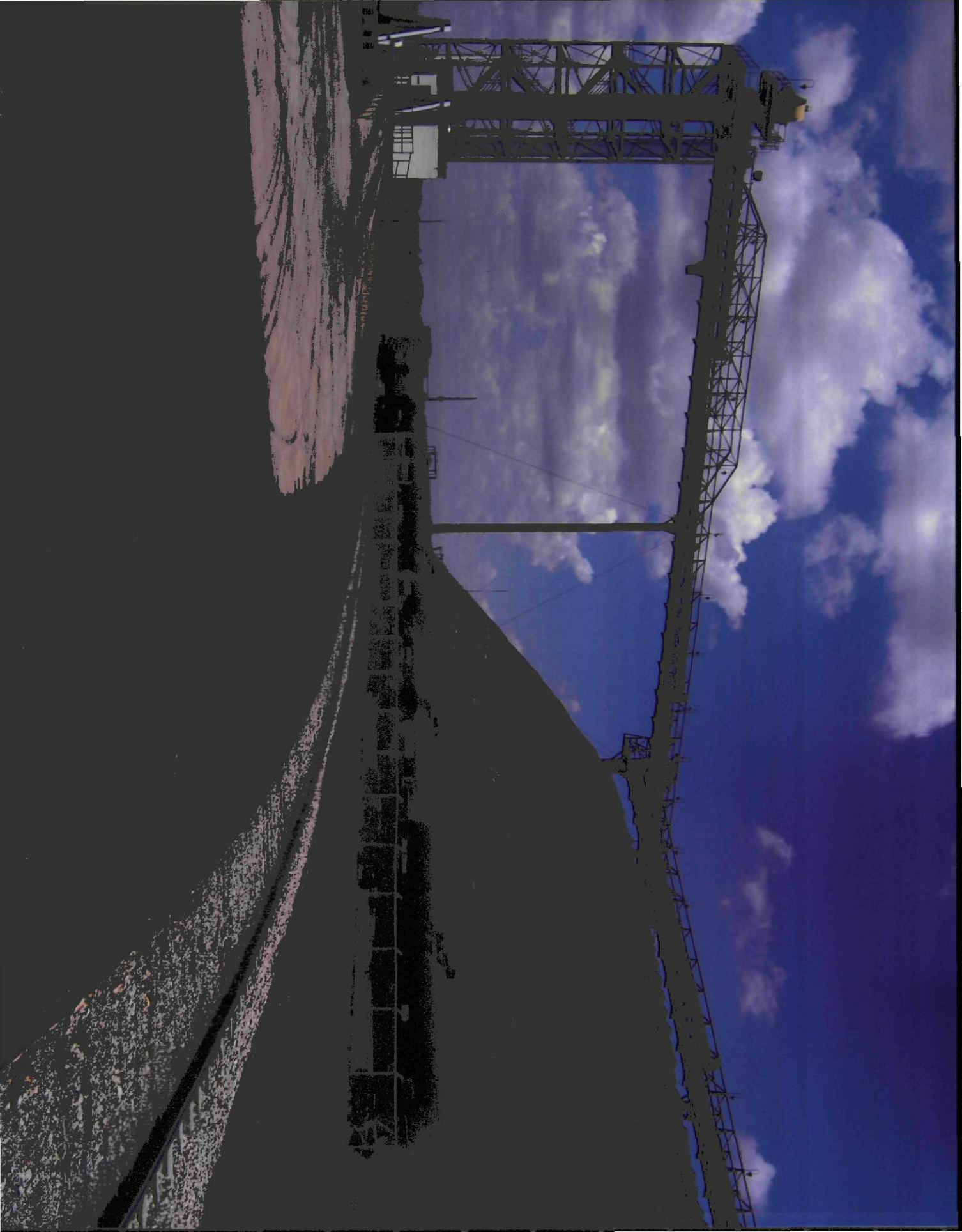


EXHIBIT B

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.)
) F.D. 34870
SOUTH PLAINS SWITCHING LTD)

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) F.D. 34899
SOUTH PLAINS SWITCHING LTD)

**Supplemental Declaration of
Gary R. McLaren
in support of Emergency Motion**

I, Gary R. McLaren, make this Supplemental Declaration in support of PYCO Industries, Inc.'s emergency motion to prevent further retaliatory actions by South Plains Switching, Ltd. ("SAW") against PYCO.

"1. I am an attorney licensed to practice law in the State of Texas and serve as legal counsel in Lubbock for PYCO Industries, Inc. ("PYCO"). As such, I have personal knowledge of the statements contained in this Declaration and the statements are true and correct."

"2. Choo-Choo Industries, Inc. ("Choo-Choo") filed suit against PYCO in the 237th District Court of Lubbock County, Texas on July 6, 2006."

"3. Choo-Choo claimed that PYCO was trespassing over the "wye track" crossing, the same crossing that has been the subject of a great deal of briefing to the Surface Transportation Board ("STB")."

"4. The 237th District Court entered a Temporary Injunction on July 20, 2006 on behalf of Choo-Choo preventing PYCO from use of the crossing over the "wye track", except that it allowed PYCO to continue to cross the wye track for a period of thirty (30) days to allow

for the transportation of millions of dollars worth of cottonseed from one side of the plant to another by using the wye track crossing."

"5. After the STB order served August 3, 2006, PYCO sought removal of the Temporary Injunction. Counsel for Choo-Choo claimed that SAW had deeded the property to Choo-Choo in March 2006, and the August 3 order did not apply. PYCO has been unable to find any such March deed, and no such deed has been produced to PYCO by SAW. Nonetheless, the 237th District Court, concerned about Choo-Choo's argument, sent STB a letter asking for clarification. By letter dated March 22, 2007, STB General Counsel Ellen D. Hanson cited decisions issued by STB on August 3, 2006 and January 24, 2007, finding that various purported transfers of SWA rail property to Choo-Choo were voided by STB, as were Choo-Choo's purported rescissions of leases."

"6. Notwithstanding the STB and the STB General Counsel's statements to this effect, Choo-Choo continues to maintain that there was ambiguity and vagueness in the STB's statements and that the purported deed transfers dated March 9, 2006 of the subject "wye track" crossing were not specifically voided by the STB's actions."

"7. The Court has heard argument on this issue and is also apparently not certain that the STB intended the wye track crossing transfer from SAW to Choo-Choo to be voided, given the fact that the Court has not issued any ruling on PYCO's requests to dismiss or abate the case, and given the fact that the Court has indicated a desire to send a second letter to the STB to inquire of the Board's intent with regard to this issue."

"8. PYCO has filed several document requests against SAW in various STB dockets, including F.D. 34870 (Complaint) and 34890 (feed line application) asking for deeds from SAW to other entities. So far the only deed produced by SAW pertaining to the "wye" is a deed dated

June 13, 2006, from SAW to Choo-Choo. A copy of that deed is annexed hereto. If SAW and Choo-Choo have another deed either rely on, such as a March 2006 deed purporting to transfer the "wye" track crossing, they should have produced that deed but have not done so. Under the clear terms of this Board's order served August 3, 2006, the June 13, 2006 deed is void. Since the deed is void, it would follow that Choo-Choo lacks standing to maintain any trespass action. Choo-Choo should have voluntarily dismissed its suit, and in the absence of Choo-Choo's cooperation, the 237th District Court of Lubbock County, Texas should have dissolved any injunction and dismissed Choo-Choo's claims. Unfortunately, SAW/Choo-Choo continue to attempt to thwart the jurisdiction of the Surface Transportation Board by maintaining both the Choo-Choo suit and injunction, even though based on a deed this Board has declared void. This is further evidence that SAW and Choo-Choo continue to thwart this Board's orders, and continue every possible effort to retaliate against PYCO for seeking relief from inadequate rail service before this Board. A clear statement from the Board (and from the Office of General Counsel if the 237th District Court sends yet another letter requesting clarification) that indicates that STB's August 3, 2006 action voiding deeds from SAW to Choo-Choo after May 5, 2006, and any other deed that SAW and Choo-Choo belatedly conjure up to transfer the "wye" since January 9, 2006, and preempts Texas state law, would assist in resolving the issue. Again, the only deed of which PYCO is aware under which SAW purports to convey the "wye" to Larry Wisener's Choo-Choo is the June 13, 2006 deed I annex hereto, notwithstanding the representations of Choo-Choo's legal counsel that the transfer occurred in March 2006."